



OFFICE OF THE ETHICS COMMISSIONER

Hon. Marguerite Trussler, Q.C.
Ethics Commissioner
Officer of the Legislature

November 21, 2019

Rachel Notley
Leader of Her Majesty's Loyal Opposition
5th fl Federal Building
9820 - 107 Street
Edmonton, AB T5K 1E7

Dear Member Notley,

Thank you for your letter dated November 20, 2019. Your request for an investigation reads as follows:

Dear Commissioner Trussler:

I am writing to seek your intervention with respect to the application of Part 2 of the Conflicts of Interest Act as it pertains to the proceedings in the Legislature on Bill 22, Reform of Agencies Boards and Commissions and Government Enterprises Act, 2019.

As you know, Members of the Legislative Assembly of Alberta have a clear obligation under section 2(1) of the Conflicts of Interest Act to ensure that they take no part in "a decision [that] might further a private interest of the Member, a person directly associated with the Member or the Member's minor or adult child." The definition of private interest under the Act is broad, and informed by the general requirement that Members of the Legislative Assembly conduct themselves with integrity and impartiality in the course of their duties.

On November 18, 2019, the Minister of Treasury Board and Finance introduced Bill 22, Reform of Agencies, Boards and Commissions and Government Enterprises Act, 2019 in first reading. At best, this bill interferes with numerous investigations around the conduct of United Conservative Party operatives by demoting the Elections Commissioner and eliminating the independence of his investigatory functions. It is actually more likely it will result in his firing, and in the delay, suspension or cancellation of his ongoing investigations. Moreover, the treatment of this independent officer will impose a profound chilling effect on the work of all those assigned to enforce election laws now or in the future as it relates to the governing party (UCP).

The implications of this bill clearly provide a material benefit to the United Conservative Party as it is their leadership contest which is being investigated. As a result, it is my belief that several different classes of MLAs should be required to recuse themselves from proceedings and votes on Bill 22 pursuant to Part 2 of the Conflicts of Interest Act.

1. Peter Singh – Under Investigation

It is a matter of public record that Peter Singh, the member for Calgary-East, is the subject of a complaint and that the Elections Commissioner and the RCMP have both been engaged in investigating his conduct during his nomination contest. As a result, it is absolutely clear that he is directly impacted by the delay suspension or cancellation of the investigation and should therefore not be allowed to vote.

2. Jason Kenney – Leader of the UCP

Jason Kenney, Leader of the United Conservative Party, is also directly impacted by the proposed bill. The investigations to date by the Elections Commissioner have called into question the legality of the conduct of at least one leadership contestant and those involved in his campaign. It has also considered the degree to which leadership voting rules were followed and leadership funding rules were followed. This calls into question the integrity of the UCP leadership selection process. Ultimately it could lead to questions around the integrity of the leadership selection outcome. It could also lead to fines that will be levied against or paid by the UCP. The reputation of the UCP is also implicated by these proceedings. Overall, the delay suspension or cancellation of the Commissioner's investigation provides a benefit to that organization. As leader of that organization, Jason Kenney is materially affected by the passage of Bill 22. As such he should be directed to forgo participating in any discussion, votes and other matters impacting Bill 22.

3. Premier Jason Kenney, Minister Leela Aheer, Minister Prasad Panda, Minister Josephine Pon, Minister Doug Schweitzer, MLA Joseph Schow and MLA Jordan Walker – Witnesses

The MLAs listed above have all been interviewed in the course of the RCMP investigation into UCP leadership vote irregularities. While the RCMP investigation is being conducted by law enforcement officials separate from the Commissioner, it was Commissioner investigators who referred matters to the RCMP. It is not clear that their own work on these matters had ceased or that further referrals might not be forthcoming. As such, as witnesses in the RCMP investigation, these MLAs are materially affected by the delay suspension or cancellation of the Commissioner's investigation.

4. All UCP MLAs – Beneficiaries of UCP Resources

Each UCP MLA earns a salary as a result of their election. In the last election, the UCP spent \$4.5 million in addition to the individual costs of individual MLA campaigns. This money was spent specifically for the purpose of ensuring the election of these MLAs. Their election was also directly related to the reputation of the UCP. Continued investigation by the Elections Commissioner stands to hurt both the reputational standing and financial status of the UCP. This, in turn, will negatively affect the ability of UCP members to get re-elected and continue earning the associated salary. This is a classic example of a material interest in the conduct of Bill 22 on the part of these MLAs. As such, it is reasonable to conclude that all UCP MLAs should be barred from voting on Bill 22.

As you are no doubt aware, the Government has made it clear they wish to have Bill 22 voted on all stages by Thursday of this week. As such your urgent attention to this matter is required in order to have these concerns addressed in a meaningful way.

Thank you for your attention and I look forward to your advice. I am available to meet at your convenience.

Sincerely,

*Rachel Notley
Leader
Her Majesty's Loyal Official Opposition*

Subsequent correspondence from Member Notley:

I apologize for this subsequent request to my letter of today. Upon reflection, and recognizing the great consequences, complexity of our Caucus' request, it occurs to me that a request from your office to the government to delay proceeding with Bill 22, pending your deliberations, might possibly be a pragmatic solution to the urgency of our request.

As such, I'm writing to request that you consider publicly requesting that the government delay passage of Bill for a short time of your choosing.

As of the writing of this letter, the Office of the Ethics Commissioner also received ten other requests from members of the public asking this Office to either investigate the matter or stop the proceedings pertaining to Bill 22, or generally raising concerns with Bill 22.

The relevant provisions of the *Conflicts of Interest Act* reads:

Decisions furthering private interests

2(1) A Member breaches this Act if the Member takes part in a decision in the course of carrying out the Member's office or powers knowing that the decision might further a private interest of the Member, a person directly associated with the Member or the Member's minor or adult child.

(2) Where a matter for decision in which a Member has reasonable grounds to believe that the Member, the Member's minor or adult child or a person directly associated with the Member has a private interest is before a meeting of the Executive Council or a committee of the Executive Council or the Legislative Assembly or a committee appointed by resolution of the Legislative Assembly, the Member must, if present at the meeting, declare that interest and must withdraw from the meeting without voting on or participating in the consideration of the matter.

(3) A Member who fails to comply with subsection (2) breaches this Act.

Influence

3 A Member breaches this Act if the Member uses the Member's office or powers to influence or to seek to influence a decision to be made by or on behalf of the Crown to further a private interest of the Member, a person directly associated with the Member or the Member's minor child or to improperly further another person's private interest.

No specific allegations have been made that any MLA voted on Bill 22 and thereby contravened the above sections of the *Conflicts of Interest Act*. As a result I do not have sufficient particulars to investigate at this time.

However, under the circumstances, I feel that an advisory opinion would be useful.

Those individuals who are in the process of being investigated by the Elections Commissioner or the RCMP would be in breach of s. 2 (1) of the *Conflicts of Interest Act* if they were to discuss the portions of Bill 22 pertaining to the Office of the Elections Commissioner or vote on the bill.

For those individuals who have close associates (as opposed to direct associates), eg. people they work closely with, or who work for them, in the process of being investigated, it is likely that they would be improperly furthering another person's private interests under s.3 of the *Conflicts of Interest Act* if they were to discuss any aspects of Bill 22 or vote on the bill.

With respect to those being questioned by the RCMP or the Elections Commissioner, it would depend on the individual circumstances and I would need further information about the particulars of each of those individuals' circumstances with respect to the investigation to form an opinion.

The fourth group of people that you mention is all United Conservative Party Members of the Legislative Assembly. Their situation is not straightforward. I cannot give an opinion with respect to this group given the very short timelines that I have been given. However, every Member has an obligation, each time the Member debates and votes on a bill before the Legislative Assembly, to be completely satisfied that the Member is not contravening s.2 or s.3 of the Act before engaging in debate or voting.

I do not have the power to request the government to delay proceedings with Bill 22. It is not within my limited jurisdiction to do so. It would be improper for me to interfere with the political process.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Trussler', with a stylized flourish at the end.

Hon. Marguerite Trussler, Q.C.
Ethics Commissioner

cc. Hon. Nathan Cooper, Speaker of the Legislative Assembly
Hon. Jason Kenney, Premier of Alberta
Hon. Leela Aheer, Minister of Culture, Multiculturalism and Status of Women
Hon. Prasad Panda, Minister of Infrastructure
Hon. Josephine Pon, Minister of Seniors and Housing
Hon. Doug Schweitzer, Minister of Justice and Solicitor General
Peter Singh, MLA Calgary- East
Joseph Schow, MLA Cardston- Siksika
Jordan Walker, MLA Sherwood Park